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No. 94-1938

In the Supreme Court of the United States

OCTOBER TERM, 1995

BARRICK GOLD EXPLORATION, INC., ET AL.,
PETITIONERS

v.

MARTY D. HUDSON, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. 9701 *et seq.*, as applied to petitioners, violates the Due Process Clause of the Fifth Amendment.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-27) is reported at 47 F.3d 832. The opinion of the district court (Pet. App. 28-75) is reported at 823 F. Supp. 1395.

JURISDICTION

The judgment of the court of appeals was entered on February 24, 1995. The petition for a writ of certiorari was filed on May 25, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

This case involves a constitutional challenge to certain provisions of the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. 9701 *et seq.* (Coal Act or Act). The United States intervened, pursuant to 28 U.S.C. 2403, to defend the constitutionality of the Act.

1. The Coal Act was enacted in 1992 in response to a crisis in health care costs in the coal industry. A brief review of the industry's preexisting health benefits system is necessary to an understanding of the Act.

For more than 40 years, the United Mine Workers of America and bituminous coal mine operators have executed a series of national collective bargaining agreements known as National Bituminous Coal Wage Agreements (NBCWAs). Those agreements have governed the terms and conditions of employment in coal mines operated by members of the Bituminous Coal Operators Association (Association) and by "me too" operators, like petitioners, who were not members of the Association but who agreed to be bound by the terms of the agreements. Pet. App. 30.

Successive NBCWAs established a multi-employer benefit fund that provided lifetime health benefits for active and retired miners. The fund was financed by contributions from Association members and "me too" operators, based on tons of coal mined during the term of each agreement. In 1974, the original fund was divided into four separate multi-employer funds, two of which are involved in this case: the UMWA 1950 Benefit Plan and Trust ("1950 Plan") and the UMWA 1974 Benefit Plan and Trust ("1974 Plan"). The 1950 Plan provided health benefits to miners who

retired before January 1, 1976, and their dependents. The 1974 Plan provided health benefits to miners who retired on or after January 1, 1976, their dependents, and active miners. Pet. App. 30-31.

In 1978, the United Mine Workers and the Association established a new structure for funding retiree health benefits. The new structure was incorporated into successor NBCWAs, including the 1988 NBCWA, that petitioners signed. Under the new system, the 1950 Plan continued to provide health benefits to miners who retired before 1976, but the 1974 Plan was restricted to cover only "orphan" post-1975 retirees, *i.e.*, those whose last employer was no longer in business. All other post-1975 retirees were thereafter to receive benefits from individual coal mine operators' employer plans, which were to be established and financed by the signatory coal mine operators. Pet. App. 32.[1]

In 1988, the United Mine Workers and signatory operators negotiated a new NBCWA containing, for the first time, a withdrawal liability clause. That clause provided that, if a signatory operator ceased to

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[1] The 1978 NBCWA and each successor agreement also contained "guarantee clauses," which provided that "the Employers hereby agree to fully guarantee" the health benefits provided by the 1950 and 1974 Plans. See *McGlothlin* v. *Connors*, 142 F.R.D. 626, 631 (W.D. Va. 1992). In addition, the 1950 and 1974 Plans, which were incorporated by reference into the NBCWAs, contained "evergreen clauses," which required each signatory coal operator who ever made contributions to the Plans to continue to make contributions at the rate specified in the current NBCWA, whether or not the operator signed that agreement. See Pet. App. 58; *United Mine Workers of Am. 1974 Pension* v. *Pittston Co.*, 984 F.2d 469 (D.C. Cir.), cert. denied, 113 S. Ct. 3039 (1993).

have an obligation to contribute to the 1950 and 1974 Plans, the operator had to pay a specified withdrawal liability to each plan. Pet. App. 3, 53-54. Although the withdrawal liability clause was intended to insure against the adverse economic consequences to retirees' health benefits of a signatory's withdrawal, the payments required by the clause "represented only five years of contributions to the Plans, not the actual cost of funding lifetime health benefits for a withdrawing employer's retirees." *Id.* at 54.

2. By the late 1980s, the financial stability of the retiree health benefit structure established in the 1978 NBCWA and successor agreements had been seriously undermined by several developments. First, "[s]ome employers successfully contended in the courts that their obligation to provide health benefits ceased with the expiration of the last NBCWA they signed, and that the 1974 Plan became responsible for their retirees' medical benefits." Pet. App. 33; see, *e.g.*, *In re Chateaugay Corp.*, 945 F.2d 1205, 1208-1209 (2d Cir. 1991), cert. denied, 502 U.S. 1093 (1992); *District 29, United Mine Workers* v. *Royal Coal Co.*, 768 F.2d 588 (4th Cir. 1985). Second, escalating health care costs increased the financial burden of providing benefits to the beneficiaries of the Plans. Third, structural changes in the coal industry caused substantial reductions in both the number of mine operators that were signatories to the NBCWAs and the number of active miners employed by signatory operators. As a result, a smaller number of signatory operators and active miners were forced to bear the growing costs of providing benefits to an

increasing number of beneficiaries of the 1950 and 1974 Plans. Pet. App. 32-33.[2]

After a protracted strike against the Pittston Coal Company, in which health benefits were a major issue, and other labor unrest in the bituminous coal industry, the Secretary of Labor appointed a Coal Commission to make recommendations about the future of funding for retirees' health benefits. After the Coal Commission issued its report, Congress held hearings to consider the Commission's findings and recommendations. Pet. App. 34-35. Those hearings led to enactment of the Coal Act.

In the Coal Act, Congress sought to "provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits to the beneficiaries of such plans." Energy Policy Act of 1992, Pub. L. No. 102-486, Tit. XIX, Subtit. C, § 19142(b)(3), 106 Stat. 3037. Congress also found that the existing private health care benefit plan structure for coal miner retirees should be modified to "identify persons most responsible for plan liabilities in order to stabilize plan funding and allow for the provision of health care benefits to such retirees." § 19142(a)(2), 106 Stat. 3037.

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[2] By 1990, only 25% of the beneficiaries under the 1950 and 1974 Plans were retirees of NBCWA signatories that were still contributing to the Plans. Approximately 60% of the beneficiaries were "orphans" whose former employers were no longer in business, and about 15% had last worked for mine operators that were still in business but no longer contributing to the Plans. See *Coal Commission Report on Health Benefits of Retired Coal Miners: Hearing Before the Subcomm. on Medicare and Long-Term Care of the Senate Finance Comm.*, 102d Cong., 1st Sess. 44-45 (1991) (testimony of Michael K. Reilly, Chairman, Bituminous Coal Operators Association).

The Coal Act addresses two separate, but related, problems in financing benefits for coal industry retirees. First, it ensures future funding for benefits under individual employers' plans, such as petitioners' plans established pursuant to the 1988 NBCWA, by requiring the last signatory employer of retirees receiving benefits under those plans to continue to provide health benefits to those retirees for as long as the signatory operator, or any related person, remains in business. 26 U.S.C. 9711(a). Second, the Coal Act broadly addresses the crisis in funding of benefits under the 1950 and 1974 multiemployer plans by requiring all signatories to the 1988 NBCWA to bear the cost of providing benefits to their own retirees and to share in the overall cost of providing benefits to "orphans" whose former employers are no longer in business. See 26 U.S.C. 9712(d)(1).

To the latter end, the Act required the merger, as of February 1, 1993 (the last day the 1988 NBCWA was in effect), of the 1950 and 1974 Plans into the new United Mine Workers of America Combined Benefit Fund (Combined Fund), a statutorily created private trust fund providing health care benefits to persons who were receiving benefits from the 1950 and 1974 Plans. 26 U.S.C. 9702(a), 9703(e). The Act also directed the Secretary of Health and Human Services to match the Combined Fund beneficiaries with operators that employed them. 26 U.S.C. 9706(a).[3]

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[3] The responsibilities of the Secretary of Health and Human Services under the Coal Act have since been transferred to the Commissioner of Social Security. See Social Security Independence and Program Improvements Act of

After completion of the match, each operator must pay an annual premium to the Combined Fund, equal to the cost of providing benefits to its own assigned beneficiaries and its *pro rata* share of all the unassigned, or "orphan," beneficiaries. 26 U.S.C. 9704(a), (b), and (d). Because the matching process could not be completed at once, the Coal Act provided that, during the first plan "year" (the eight-month period beginning February 1, 1993), the cost of administering and paying benefits from the Combined Fund would be paid by all the operators who, like petitioners, signed the 1988 multi-employer collective bargaining agreement. 26 U.S.C. 9704 (i)(1)(A).[4]

3. Petitioners are coal operators that signed the 1988 NBCWA and prior national collective bargaining agreements. During the term of the 1988 NBCWA, petitioners ceased covered operations and withdrew from the 1950 and 1974 Plans. Petitioner Barrick Gold Exploration, Inc., ceased covered operations in October 1988, and petitioner Creighton Hills Coal Co. ceased covered operations in March 1992. See Pet. 14-

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1994, Pub. L. No. 103-296, §§ 105(a)(2)(A), 108(h)(9)(A), 108 Stat. 1472, 1487-1488.

[4] The Act also establishes another multi-employer plan, the United Mine Workers of America 1992 Benefit Plan, as a safety net to provide health benefits to persons who should receive coverage under an individual employer plan but do not. See 26 U.S.C. 9712(b)(2). Every operator who signed the 1988 NBCWA must pay an annual premium and provide security to the 1992 Benefit Plan to cover the estimated cost of providing the benefits attributable to that operator. 26 U.S.C. 9712(d)(1)(A) and (C). Operators must also pay a monthly premium for each of their beneficiaries who actually receives benefits from the 1992 Benefit Plan. 26 U.S.C. 9712(d)(1)(B) and (3).

15. Upon terminating their participation in the 1950 and 1974 Plans, petitioners became obligated to make the contractual withdrawal liability payments specified in the 1988 NBCWA, which were made.

As signatories of the 1988 NBCWA, petitioners are subject to the funding obligations of the Coal Act, including the requirement that they bear part of the cost of administering and paying benefits under the Combined Fund, the successor to the 1950 and 1974 Plans. Petitioners brought suit for declaratory and injunctive relief in 1993, asserting a variety of constitutional objections to the operation of the Coal Act. Over the course of the litigation, petitioners abandoned all but one of their original constitutional claims. They now claim only that the Act as applied to them violates the substantive component of the Due Process Clause of the Fifth Amendment, because it obligates them to participate in the funding of the Combined Fund without providing an offsetting "credit" for the amounts they paid to satisfy their contractual withdrawal liability under the 1988 NBCWA to the Combined Fund's predecessors.

After consolidating preliminary injunction proceedings with a trial on the merits, the district court entered judgment for respondents. Pet. App. 28-75. The district court rejected all of petitioners' constitutional claims, including their due process claim based on the Act's failure to credit their withdrawal liability payments. The district court concluded that "Congress rationally found that the practice of operators withdrawing from the industry or otherwise terminating their obligation under the NBCWA * * * substantially contributed to the underfunding problems experienced by [the 1974] Plan" and that "[t]hese problems were not adequately addressed

by the contractual withdrawal liability payments required under the NBCWA." *Id.* at 54-55.

The court of appeals affirmed. Pet. App. 1-27. The court acknowledged that the Due Process Clause "has a substantive component as well as a procedural one," and that substantive due process "clearly remains viable in the [Supreme] Court's thinking today." *Id.* at 6 n.4. The court further observed, however, that modern substantive due process review of social and economic legislation is highly deferential, even when that legislation "upsets otherwise settled expectations" or "impose[s] a new duty or liability based on past acts." *Id.* at 14-15. Applying a deferential standard of review, the court found no reason why Congress was constitutionally obligated to credit petitioners for their contractual withdrawal liability payments, and it found this case similar to others in which this Court upheld "requirement[s] * * * that companies withdrawing from multiemployer pension plans make payments to reduce the unfunded vested liabilities of the plans." *Id.* at 18.

ARGUMENT

Petitioners renew their contention that the Coal Act violates substantive due process because it requires operators that signed the 1988 NBCWA and made withdrawal liability payments to the 1950 and 1974 Plans under that agreement to share in the financing of the Combined Fund, the Plans' successor, without receiving any credit for the earlier withdrawal liability payments. The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court or

any other court of appeals. Further review is therefore unwarranted.[5]

1. "In passing the Coal Act, Congress removed the subject of health benefits for * * * retirees from the collective bargaining process and dealt with it legislatively instead." Pet. App. 7. That legislation "come[s] to the Court with a presumption of constitutionality, and * * * the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way." *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 15 (1976). As long as a "statute is supported by a legitimate legislative purpose furthered by rational means, judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches." *Pension Benefit Guaranty Corp.* v. *R.A. Gray & Co.*, 467 U.S. 717, 729 (1984); *Turner Elkhorn*, 428 U.S. at 15-16. Moreover, "there is no need for mathematical precision in the fit between justification and means" chosen by the legislature. *Concrete Pipe & Prods. of California, Inc.* v.

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[5] Petitioners urge the Court to grant certiorari to decide whether the Due Process Clause imposes substantive, as well as procedural, limitations on government action. Pet. i, 20-26. That issue does not require this Court's review; the Court recently reiterated that the Due Process Clause contains a "substantive component * * * that protects individual liberty against 'certain government actions regardless of the fairness of the procedures used to implement them.' " *Collins* v. *City of Harker Heights*, 503 U.S. 115, 125 (1992). The court of appeals also recognized that "[t]he concept of substantive due process clearly remains viable" and that "courts may invalidate legislation that deprives persons of life, liberty, or property on a basis found to be arbitrary and irrational." Pet. App. 6 n.4.

Construction Laborers Pension Trust, 113 S. Ct. 2264, 2288 (1993). Applying those deferential standards to the Coal Act, the court of appeals was plainly correct in holding that the Act does not violate petitioners' substantive due process rights.

2. Petitioners' due process claim has three related themes. First, they contend (Pet. 26-27) that their contractual withdrawal liability payments, which ended their contractual obligations to the 1950 and 1974 Plans under the 1988 NBCWA, rendered them constitutionally exempt from the imposition of new statutory funding obligations under the Coal Act. Second, they argue (Pet. 29-32) that, even if Congress had the constitutional authority to include them in the Coal Act's funding obligations, Congress was constitutionally required to give them an offsetting credit for the contractual withdrawal payments they made before the Act took effect. Third, they contend (Pet. 27-28, 33-35) that the Coal Act did give a credit to the 97% of 1988 NBCWA signatories that did not incur contractual withdrawal liability before enactment of the Act, and that the Act's failure to provide them with a comparable credit is irrational.

a. With respect to the first of those objections, petitioners complain that the Coal Act denied them the benefit of their contractual bargain under the 1988 NBCWA by imposing obligations beyond those that they contracted to assume. See Pet. 37. But even assuming that is true as a factual matter, it does not establish a constitutional violation under the Due Process Clause. The Due Process Clause does not prohibit Congress from imposing legal and financial obligations on employers beyond those voluntarily assumed by contract. To the contrary, Congress may override private contractual limits on liability, and it

may even do so retroactively, as long as it has a rational basis for doing so.

This Court's decisions in *Gray* and *Connolly* v. *Pension Benefit Guaranty Corp.*, 475 U.S. 211 (1986), are illustrative. *Gray* and *Connolly* addressed constitutional challenges to the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), Pub. L. No. 96-364, 94 Stat. 1208 (codified at 29 U.S.C. 1381-1461 (1988 & Supp. V 1993)), which retroactively imposed statutory withdrawal liability on employers that had withdrawn from multi-employer pension plans prior to the statute's enactment. In both cases, affected employers contended that the MPPAA was unconstitutional because, *inter alia*, it retroactively imposed financial obligations beyond those they had assumed by contract, thereby defeating their settled contractual expectations.

This Court held that the retroactive expansion of financial liability beyond the terms of the parties' contracts did not offend either the Due Process Clause (*Gray*) or the Just Compensation Clause (*Connolly*) of the Fifth Amendment.[6] In *Gray*, the Court explained that "legislation readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectations," and that "[t]his is true even though the effect of the legislation is to impose a new duty or liability based on past acts." 467 U.S. at 729-730. Similarly, in *Connolly*, the Court explained that "[i]f the regulatory statute is otherwise within the powers of Congress, * * * its application may not be defeated by private contractual

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[6] Petitioners in this case also challenged the Coal Act below under the Just Compensation Clause, Pet. App. 24-27, but they have abandoned that claim in this Court.

provisions." 475 U.S. at 224. Those decisions foreclose any argument that petitioners' contractual obligations under the 1988 NBCWA marked the constitutional outer limit of Congress's powers.

b. Petitioners next argue that, even if Congress may subject them to the Coal Act's funding obligations, it may not do so unless it also provides them with a "refund, credit, or offset" (Pet. 27) for the sums they paid as contractual withdrawal liability under the 1988 NBCWA. That claim, in essence, is simply a complaint that the Coal Act is less fair, as applied to petitioners, than it would have been had petitioners been granted an offsetting credit. But the Constitution does not place the courts in the general role of second-guessing the substantive fairness of economic legislation like the Coal Act. See, *e.g.*, *FCC* v. *Beach Communications, Inc.*, 113 S. Ct. 2096, 2101 (1993). In choosing a scheme to remedy the complex financial problems besetting the retired miners' health benefits system, Congress had to reconcile many concerns and had to choose from among a wide variety of options for allocating the costs of medical care for coal industry retirees. "[W]hether a broader [or narrower] cost-spreading scheme would have been wiser or more practical under the circumstances is not a question of constitutional dimension." *Turner Elkhorn*, 428 U.S. at 19.

Petitioners assert (Pet. 31) that, because they made contractual withdrawal liability payments, it was not "rational to treat the employees' expectation of benefits * * * as [their] responsibility," at least in the absence of offsetting credits. But petitioners were "responsible" for retirees' benefits under the 1950 and 1974 Plans, for they contributed to those plans under the various NBCWAs to which they were

signatories, and, as the district court pointed out (Pet. App. 54), the contractual withdrawal payments made by petitioners represented only five years of contributions to the Plans, not the actual cost of funding lifetime health benefits for a withdrawing employer's retirees. Petitioners' withdrawal thus contributed to the coal industry's medical care funding problems, even after their withdrawal liability payments are taken into account. Congress's decision to require petitioners to contribute to the amelioration of the Plans' funding crisis was therefore constitutional, for "[i]t is surely proper for Congress to legislate retrospectively to ensure that costs of a program are borne by the entire class of persons that Congress rationally believes should bear them." *United States* v. *Sperry Corp.*, 493 U.S. 52, 65 (1989).

c. Finally, petitioners maintain (Pet. 27-28, 33-35) that Congress granted other 1988 NBCWA signatories that did not withdraw from the Plans the same credit that it withheld from petitioners. That contention is incorrect. Petitioners assert that a credit to nonwithdrawing signatories was "effectively" created (Pet. 28, 33) by 26 U.S.C. 9702(a)(2), which provides that the Coal Act's statutory merger of the 1950 and 1974 Plans into the Combined Fund shall not be treated as an employer withdrawal for purposes of the 1988 NBCWA. That provision did not grant anyone a credit; instead, it ensured that 1988 signatories that had not terminated their participation in the Plans were not subjected to unintended contractual withdrawal liability because of a technical change (the statutory conversion of the 1950 and 1974 Funds into the Combined Fund) over which they had no control.

Petitioners also overlook the fact that other signatories incurred costs that petitioners avoided by withdrawing from the 1950 and 1974 Plans. The other signatories continued to pay monthly contributions to the 1950 and 1974 Plans throughout the full term of the 1988 agreement until the Coal Act took effect. Moreover, those signatories had to increase their contributions to comply with preliminary injunctions issued in litigation over the Plans. See, *e.g.*, *McGlothlin* v. *Connors*, 142 F.R.D. 626, 647 (W.D. Va. 1992). Thus, even if the financial obligations imposed on petitioners by the Coal Act were different than those imposed on non-withdrawing operators, Congress had a rational basis for drawing such a distinction.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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